

Appn. Number 09/641,410 (Kiely) GAU 1761 Amendment B after RCE

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DEC 06 2006**REMARKS**

General

In response to the Office Action of November 6, 2006, Applicant has revised the claims directing them to Applicant's composite support, to place them in clear and full condition for allowance. Applicant submits that all claims now clearly define novel and unobvious subject matter over each and every reference and any combination thereof.

The Rejections on Musher, Firmin and Hood

Summary

The last office Action rejected all of the claims on Musher under section 102 and Firmin, and Hood, under section 103. Applicant requests reconsideration of this rejection as applicable to new claims 229 to 258 since Applicant submits that all of the new claims recite novel and unobvious subject matter over each of these references.

Applicant's Invention

Applicant's invention is a novel edible support for supporting a frozen comestible, which comprises an edible composite ingredient, or an edible composite support comprising a discernable ingredient. Applicant's supports can be made with various comestibles to make different flavors and textures, such as caramel with nuts, and can be formed without high boiling or baking temperatures for easier manufacturing. This support when supporting ice cream keeps the ice cream cold far longer than a prior art support. It also provides a second confection for a consumer, resolving the problem that there should be more to a supported confection that is eaten hastily because of melting. It can be made in any size, or shape, provide numerous flavor combinations and textures, as well as being made of inexpensive ingredients. It is a very beneficial and delicious way to support a frozen comestible.

Reference Definitions:

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Ingredient: noun - 1) something that enters as an *element* into a mixture: Flour, eggs and sugar are the main ingredients in the cake. 2. a constituent element of anything; component: the ingredients of political success. Constituent suggests a necessary part of the whole: (element) Origin: F. **Ingredient**, L. Ingrediens, -entis, entering into, p. Pr. Of ingredi, p. P. Ingressus, to go into, to enter; pref. In- in + gradi to walk, go. See Grade.

Source: Websters Dictionary (01 Mar 1998)

Element: a component or constituent of a whole or one of the parts into which a whole may be resolved by analysis: bricks and mortar are elements of every masonry wall. (Dictionary.com)

Element: A fundamental, essential, or irreducible constituent of a composite entity. (American Heritage Dictionary, Dictionary.com)

Composite: French, from Old French, from Latin *compositus*, past participle of *componere*, to put together. See component.]

The Relied Upon References

While Musher's flakes, nuts, raisins, etc. are ingredients of the confection, as is the ice cream, they are not ingredients of the support. Musher teaches that the flake framework may be "eliminated entirely." (Page 6, col. 1, lls. 58-62) Therefore, Musher's flakes, nuts, raisins, etc. are not ingredients of the support. Consequently, Musher's does not show any composite ingredients, or discernable ingredients in his baked dough support. A necessary, or essential, part of the whole cannot be eliminated (ingredient; element; constituent; above). Musher does not show a composite ingredient, or a discernable ingredient, only baked ingredients.

Also, Musher's external flakes, nuts, raisins, and the like, cannot "enter into" (*ingredients above*) the mixture of the baked support but remain separated by a coating, which can be eliminated, (fig. 3) and are therefore not ingredients of the support. These flakes, etc. are also individually coated and are themselves not composites. (Example IV) Musher's lollipop does the same thing as the framework and is not an ingredient of the support, nor is the framework ingredients of the support. The framework is a dispersed lollipop which may be a composite member added onto the stick, but not an ingredient in it. Musher's conventional support ingredients that go into the

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mixture are flour, eggs, liquids, and leavening. Musher's dough stick does not show a discernable ingredient, as these ingredients are not discernable, or detectable, when mixed and/or baked. Musher does not show a composite ingredient, since his ingredients are baked together, not "put together." (composite, above)

Additionally, Musher's items 19 are either 1) projections of an edible baked or toasted product, 2) baked to a wooden stick, or 3) attached by an edible coating to the outside of the stick. Items 19 may also be entirely eliminated, (figs. 1, 3-5) and are not ingredients of the support. None of these scenarios show a composite ingredient, or a discernable ingredient in the support.

Firmin's support is a boiled candy stick, which may be twisted and may have a coating on its upper end. This coating can be eliminated (figs. 1-3) or substituted by an inedible wrapper (fig. 5), (Examiner pg. 4, 6/1/06) is not essential, and therefore is not an ingredient in the support. Firmin does not show a discernable ingredient, or a composite ingredient.

Hood's (Seattle Weekly July 1999) - not prior art please see:[11/5/04] incoming letter; Exhibits) twin popsicle handles are not edible and do not show an edible ingredient, a discernable ingredient, or a composite ingredient.

The Claims Recite Novel Features And Thus Distinguish Under § 102

All of the claims clearly recite novel features over the references under section 102.

Independent claim 229 recites: "... (b) a composite ingredient for supporting said frozen comestible."

This limitation clearly distinguishes over Musher, as his support shows only conventional ingredients of flour, eggs, liquid and leavening, which are baked together and are not "put together."

This limitation clearly distinguishes over Firmin, whose support does not show a

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composite ingredient, only a boiled candy stick.

This limitation also clearly distinguishes over Hood, as Michael's twin popsicle sticks are not edible and do not show an edible composite ingredient.

Independent claim 241 recites: "... (b) an edible composite support comprising a discernable ingredient for supporting said frozen comestible."

This limitation clearly distinguishes over Musher, whose support does not show a discernable ingredient in his baked dough stick.

This limitation clearly distinguishes over Firmin, whose boiled candy stick does not show a discernable ingredient.

This limitation clearly distinguishes over Hood, since Hood's sticks are inedible and do not show a discernable ingredient.

Independent claims 249 (means, composite ingredient) and 251 (means, composite support with discernable ingredient), Independent claim 253 (An edible composite ingredient for subsequently supporting a frozen comestible) recite similar limitations of an edible support comprising a composite ingredient, or a composite support comprising a discernable ingredient.

Applicant therefore respectfully submits that all independent claims and hence all claims clearly recite novel structure over the references, which are all novel under § 102.

The Novel Structure of the Claims are Patentable Under § 103

Applicant respectfully submits that the above structure of the independent claims are also unobvious and hence patentable under § 103, since the claims create new and unexpected results. Applicant's novel support of a composite ingredient, or a composite support with a discernable ingredient, clearly is advantageous over the prior art. This support is dependable and does not

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have to be boiled, or baked. A composite ingredient, that is put together, such as a candy composite, provides a dependable support for a frozen comestible. Different flavors and textures are be easily put together to provide different tastes and textures in a single support. A composite ingredient support can include an ingredient that protects against stress, reducing the breakage of a support, as compared to a brittle prior art baked or boiled stick that can easily break or crack. These advantages are truly unobvious, as well as beneficial.

Neither Musher, Firmin, nor Hood, alone or in combination, are able to provide a support made of a composite ingredient. None of these references can provide a yielding, yet durable support that can be shipped and delivered, with the great probability of intact products. This is extremely advantageous when transporting a frozen support.

Applicant thus respectfully submits that the prior art sticks and cones are incapable of providing a composite ingredient support, which can also have a plurality of other ingredients added for flavor, texture, and dependability. Applicant's features are surprisingly unobvious, as well as novel, over the prior art references.

Applicant submits that her discernable, or composite ingredient support is both novel and unobvious over Musher, Firmin, and Hood and submits that the independent claims, and hence all claims should be allowed.

The dependent claims recite additional structure of the support in combination with the structure of the independent claims and therefore respectfully submits that they are a fortiori allowable.

Conclusion

For all of the above reasons, Applicant submits that the claims now define novel structure under § 102, which novel structure is unobvious and thus patentable under § 103. Accordingly Applicant submits that allowance of claims 229-258 is warranted and respectfully requests such action.

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Conditional Request For Constructive Assistance

Applicant submits that she has a novel and unobvious invention. She has made a diligent effort to amend the claims of this application so that they recite novel features of her invention, which she submits are unobvious. If, for any reason, the Examiner believes that the claims of this application are not yet in full condition for allowance, Applicant respectfully requests the Examiner's constructive assistance and suggestions pursuant to the spirit of MPEP § 2173.02 and § 707.07(j). This will enable the undersigned to place this application in fully allowable condition as soon as possible and without the need for further proceedings.

Very Respectfully,


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Certificate of Facsimile: I certify that on the date below, this document and referenced attachments, if any, will be faxed to the central fax number of 571-273-8300 to the United States Patent and Trademark Office "Commissioner for Patents" Arlington, Virginia 22313.

2006 December 6,


Alice O. Kiely